

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1800 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KANTABEN W/O HIRABHAI

DHARMABHAI

Versus

COLLECTOR BANASKANTHA

Appearance:

MS KUSUM M SHAH for Petitioner

MS MANISHA LAVUKMAR for Respondent No. 1, 4

MR CHETAN PANDYA FOR MR SV RAJU for Respondent No. 2

None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/06/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. During the course of arguments, this court has given out to the learned counsel for the parties what it

proposes to pass the order in this matter. To this, the learned counsel for respondent No.2 contended that if such orders are passed by the courts, it will encourage encroachment on the Government or Municipal lands. Though this argument of the learned counsel for respondent No.2 at first glance seems to be having substance but if we go by facts of the case, I am constrained to observe that the respondent No.2 has made it convenient for people, i.e. allottees of the plot adjacent to the disputed land, to make encroachment thereon. I fail to see at the time when the scheme has been framed for allotment of plots to people, why this small strip of land has been left out in between two plots. In case this small strip of land would not have been left out, there would not have been any occasion for the petitioner to make encroachment on this half strip of land and then to come up before this court and similarly there would not have been occasion for the respondent No.3 to apply for the said strip of land. So the blame lies with the municipality and not with the court. This contention of learned counsel for respondent No.3 is wholly misconceived and the same is rejected.

#. It is not in dispute that the plot bearing City Survey No.13768 has been allotted to the husband of the petitioner by Palanpur Municipality. Plot bearing City Survey No.13761 was allotted to the father of respondent No.3. The father of respondent No.3 expired in 1985. After allotment of the plot, the petitioner made encroachment on the half of the adjacent strip of land and thereon she constructed a room. I appreciate the anxiety of the learned counsel for respondents that it was an encroachment made on half strip of this open land and the construction put is illegal but at the cost of repetition, it is to be stated that it is creation of the municipality and it is to be blamed. Under the settlement alleged to be made amongst the family members after the death of father of respondent No.3, the said plot bearing City Survey No.13761 was given to the elder brother of respondent No.3. The respondent No.3 taking advantage of their own creation, applied to the respondent No.2 for allotment of this land and taking it to be a case where there is no plot standing in the name of respondent No.3, the municipality has passed the order for allotment of this strip of land to respondent No.3. Naturally, it gave cause to the petitioner to approach to the higher authorities and prayed for allotment of half strip of land adjacent to her plot but ultimately she failed. Hence she is before this court. If the ground given for allotment of strip of land in favour of respondent No.3 is accepted, then it is equally

applicable to the case of the petitioner also as though plot is there in the name of husband of petitioner but there is no plot in the name of petitioner on which fact there is no dispute between the parties. So this ground given out by learned counsel for respondent No.2 for allotment of this strip of land to respondent No.3, in view of the fact that after the death of the father of respondent No.3, the plot allotted to him was transferred in the name of elder brother, is wholly perverse and it cannot be allowed to stand.

#. Now the question does arise what relief has to be granted in this case to the petitioner. The petitioner is claiming half of this strip of land. After giving half portion thereof whatever remains, it remains to the adjacent to the plot bearing City Survey No.13768 and it will not be a plot of the area which can fetch a reasonable price if it is put to auction. Otherwise also, to permit third person to be inducted on this small strip of land will cause unnecessary disturbance to other holders of the adjacent land.

#. So interest of justice will be served in case the rest of the part of this strip of land is allotted to the elder brother of respondent No.3 which is adjacent to his plot and the other strip of land, which is adjacent to the plot allotted to her husband, on which the petitioner has put construction of room is permitted to be retained by her. Rule is made absolute in aforesaid terms. Both, the petitioner and the brother of respondent No.3 are liable to pay the cost of this land as fixed by respondent No.2, as per reserved price fixed for the area concerned. The respondent No.3 is directed to pay Rs.2,000/= as costs of this petition.

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(sunil)